



**THE COURT OF APPEAL**

Neutral Citation Number: [2021] IECA 262

**Record Number: 2020/107**

**High Court Record Number: 2018/875JR**

**Noonan J.  
Murray J.  
MacGrath J.**

**BETWEEN/**

**L.M**

**APPELLANT/APPLICANT**

**-AND-**

**NIALL ROONEY COUNTY REGISTRAR  
OF WATERFORD SITTING AS  
COUNTY REGISTRAR OF CORK  
(SITTING AS TAXING MASTER)**

**RESPONDENT**

**-AND-**

**A.M**

**RESPONDENT/NOTICE PARTY**

**Costs Ruling of the Court delivered on the 15th day of October, 2021**

1. The principal judgment in these proceedings was delivered on the 14th July, 2021 ([2021] IECA 195). The appeal of the appellant (Mr. M.) was dismissed. At the conclusion of the judgment in para. 38, Noonan J. indicated the court's provisional view that the notice party (Ms. M.) should be entitled to her costs of the appeal. Mr. M. was given liberty to contend for a different order within 14 days of the judgment, if he wished to do so, by making submissions in writing. No submissions were made by Mr. M. and accordingly the costs order takes effect.
2. The court subsequently received a request from Ms. M.'s solicitors to measure the costs of the appeal, as was done also by the High Court, in the unusual circumstances of this case, referred to in the principal judgment. The court agreed to this proposed course of action

and directed Ms. M's solicitor to swear an affidavit exhibiting his bill of costs together with the opinion of a legal cost accountant in relation to same.

3. Ms. M.'s solicitor, Colm Burke, has now sworn an affidavit on the 26th August, 2021. He avers that his file has been examined by Noel Roarty, legal costs accountant, for the purpose of advising as to the appropriate fee in respect of the work done by Mr. Burke and counsel instructed by him in relation to the appeal. Mr. Burke exhibits his detailed fee note together with counsel's fee note and the advice of Mr. Roarty confirming same. Mr. Roarty provides a detailed analysis of the fee note in his report of 11th August, 2021 and concludes that the fee for both solicitor and counsel is a reasonable professional fee. The total amount of fees claimed in respect of Ms. M.'s costs of the appeal is €43,303.00, inclusive of VAT.
4. Mr. Burke's fee note was also submitted to an independent firm of legal costs accountants, Messrs. Connolly Lowe who have given a further opinion of the 23rd August, 2021 in respect of Mr. Burke's fee note. William Brennan FILCA of that firm has provided his opinion that the fee claimed in the fee note in respect of both solicitor and counsel are reasonable and likely to be allowed by the Legal Costs Adjudicator were this matter to proceed to adjudication.
5. A replying affidavit was sworn by Mr. M. on the 4th October, 2021. At para. 4, Mr. M. correctly suggests that the court's jurisdiction for measuring costs is to be found in O. 99, r. 7(2) of the RSC. He goes on however to say that he considers that the jurisdiction of the court to measure costs has been ousted by virtue of the coming into force of the Legal Services Regulation Act, 2015 and were the court to measure costs, this would constitute an impermissible interference with the duties and functions of the Legal Costs Adjudicator as appointed and mandated by the Act of 2015.
6. The recast O. 99 came in to effect following the commencement of the 2015 Act and explicitly refers to it. O. 99, r. 7(2) provides as follows: -  
  
“(2) In awarding costs, the Court may:
  - (a) direct that a sum in gross be paid in lieu of adjudicated costs;
  - (b) in determining the amount of any such sum, of its own motion or on the application of the parties, appoint an independent legal costs accountant to report on the work to which the costs relate and shall direct that the parties be furnished with the copies of any such report, and
  - (c) direct that the costs of preparing a report referred to in paragraph (b) be added to the sum in gross awarded or be paid by another party.”
7. The rule thus preserves the long-standing jurisdiction of the court to measure the costs of any proceedings, or part of proceedings, where it considers it appropriate to do so as an alternative to taxation of costs, or as it now is under the 2015 Act, adjudication of costs. It would be surprising indeed if the 2015 Act had brought about the circumstance of depriving the court of full jurisdiction to control each aspect of its own processes as it sees fit. This is also consistent with the fact that an appeal to the court may be brought from

any determination of the Taxing Master and now the Legal Costs Adjudicator. Had it been the intention of the Oireachtas in passing the 2015 Act to deprive the court of such a long-held jurisdiction, explicit words would have been required to do so and none such appear in the Act.

8. The court is therefore satisfied that Mr. M.'s argument in this regard is misconceived. It is undoubtedly relatively unusual for the court to measure costs in any particular case but we do not doubt that the court can, in appropriate circumstances, do so. Such circumstances may arise for any number of reasons such as, for example, where the cost of a particular proceeding is perhaps modest and readily ascertainable and would be disproportionate to the time and expense necessary to have same adjudicated.
9. In the present case, different considerations arise by virtue of the quite exceptional nature of these proceedings to which reference is made in the principal judgment. In the light of the views expressed therein, this is a case in which the court should exercise its discretion under the rule to avoid the potential for oppression of the kind referred to in the judgment, which arises directly from an earlier costs issue. The special circumstances of this case justify the court in departing from what might otherwise be the norm in respect of costs.
10. While O. 99, r. 7(2), and each subparagraph thereof, are clearly discretionary, the court is entirely satisfied that this is an appropriate case for the exercise of that discretion. Although the court has not directed a separate report from an independent legal costs accountant, in effect that has been rendered unnecessary as Mr. Burke has put before the court the opinion not only of his own costs accountant but also that of an independent costs accountant.
11. In his replying affidavit, dealing with the issue of the quantum of the costs themselves, Mr. M. has elected not to put before the court any countervailing opinion of a legal costs accountant instructed by him and in such circumstances, it is appropriate for the court to accept the views offered by the two firms of legal costs accountants already mentioned, to the effect that the quantum of the bill is fair and reasonable and likely to be at a level approved by the Legal Costs Adjudicator.
12. Accordingly, the court proposes to measure Ms. M.'s costs in the sum of €43,303.00 inclusive of VAT.